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APRIL 2000

HELENA, MONTANA

VOL. XII NO. 11

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## REVENUE AND TAXATION COMMITTEE

Revenue and Taxation Committee Discusses HB 260 Decision... The Revenue and Taxation Committee met February 17 and 18. Lee Heiman, staff attorney, discussed the implications of the recent Montana Supreme Court decision that declared unconstitutional a new coal producer's license tax. That tax, enacted by HB 260, was established to fund research and commercialization projects as well as other economic development programs. The new tax was challenged by Montanans for the Coal Trust on the grounds that the new tax was an illegal diversion of the coal severance tax. The Supreme Court took original jurisdiction of the case. According to Heiman, the Court used the [Dick Darman] duck test to overturn the new tax. The court reasoned that if the tax looks like a severance tax, walks like a severance tax, and quacks like a severance tax, then it must be a severance tax. The Montana Constitution requires that any diversion of coal severance tax revenue destined for the permanent coal trust fund must be approved by 3/4 of the members of each house of the Legislature. Because HB 260 passed on a simple majority vote, the resulting diversion is unconstitutional. Heiman noted that the "duck" test penumbra would make drafting a similar, but constitutional bill very difficult.

Gordy Higgins, Legislative Research Analyst, discussed the economic policy initiatives developed by the Select Committee on Jobs and Income that were eventually incorporated into HB 260. Money was allocated for research relating to improvements in agricultural businesses and the commercialization of and marketing of new agricultural products. Money was also allocated to the Department of Commerce for promoting economic strategies in the state. Approximately \$10 million for the biennium was allocated for research and commercialization projects. The Research and Commercialization Commission would provide grants to qualified applicants.

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Committee Adopts Revenue Estimating Schedule...The Revenue and Taxation Committee is required under 5-18-107, MCA, to prepare by December 1 an estimate of the amount of revenue projected to be available for legislative appropriation during each session of the Legislature. Revenue estimates are adopted based on recommendations prepared by legislative and executive branch staff. The formal process will begin next September with the Committee's final revenue estimate completed in mid-November.

Committee Requests Speed Limit Bill Draft...In 1999 the Montana Legislature enacted SB 133 to impose speed limits on the interstate and other public highways. The concern has been raised that the 70 mile-per-hour speed limit on certain secondary roads may be too fast for road conditions. Several officials of county governments have requested that the Department of Transportation establish special speed limits on secondary roads. Tim Reardon, chief legal counsel for the Department, told the Committee that the Department has the authority to revise speed limits following an engineering study. He said that the Montana Transportation Commission has adopted a resolution that would allow the Department to conduct a preliminary examination of a road and to recommend to local officials an interim speed limit prior to a full engineering study. If local officials do not agree with the preliminary recommendation, the speed limit is the posted limit as of May 28, 1999, until the engineering study is completed. The final recommendation must be approved by the Transportation Commission. Following a discussion of some of the issues, the Committee voted unanimously to request that the Department prepare draft legislation to address speed limit issues on primary and secondary roads for possible introduction during the special session scheduled for May.

Other Issues and Topics...The Committee discussed a variety of other issues and topics during the 2-day meeting, including:

- ▶ the implementation of HB 174 that revises the taxation of electrical generation property;
- ▶ the effects of SB 184 on local property taxpayers and local governments;
- ▶ a discussion of the Community Enhancement Development Program administered by the Department of Transportation;
- ▶ the status of the state highway special revenue account; and
- ▶ a formal request that the Department of Transportation work with the Montana Contractors' Association regarding revising rules to suspend or debar a contractor from bidding on projects.

Committee to Meet April 13 and 14... The Committee will meet Thursday, April 13 and Friday, April 14 in Room B7 of the Federal Building, Helena. Thursday will be devoted to transportation issues and Friday to revenue issues. Although the agenda has not been finalized, some items for discussion include:

- ▶ status of the general fund in anticipation of the special session to be called by the Governor (Thursday, April 13);

- ▶ contribution of transportation projects to the Montana economy;
- ▶ draft legislation to revise speed limits on primary and secondary roads;
- ▶ proposal to clarify language related to distribution of motor vehicle fees under HB 540 (legislative referendum to revise taxation of light vehicles);
- ▶ 1999 individual income tax analysis;
- ▶ Geographic Information System demonstration;
- ▶ report on income tax credits claimed for contributions to qualified endowments;
- ▶ overview of oil and natural gas production and taxation;
- ▶ implementation of revised taxation of telecommunications under HB 128; and
- ▶ tax increment finance district issues.

Debt Service Subcommittee to Meet in April... The Debt Service Subcommittee is scheduled to meet April 12, at 1:30 p.m. in Room 487 of the Federal Building, Helena. The principal topic will be a discussion of using market value as the basis of establishing bonding capacity for local governments.

For additional details about the April meeting contact Jeff Martin by calling (406) 444-3064 or by e-mail at <[jmartin@state.mt.us](mailto:jmartin@state.mt.us)>.

## LEGISLATIVE SERVICES DIVISION

### LEGISLATIVE LIBRARY

The following memorandums are available from the Legislative Library:

"Overview Regarding Training for Law Enforcement Officers on Mental Health Issues", Report for the House Joint Resolution No. 35 Subcommittee on Mental Health, Susan Byorth Fox, March 2000

"Tobacco Settlement Proceeds and Why Children and Families Interim Committee is Studying Them as a Public Health Issue", Report for the Subcommittee on the Tobacco Settlement, Susan Byorth Fox, February 2000

Copies of the above memorandums are available on the Children, Families, Health, and Human Services Committee reports website at [http://leg.state.mt.us/Reports/Interim\\_Committees/Children\\_and\\_Families/staffreports.htm](http://leg.state.mt.us/Reports/Interim_Committees/Children_and_Families/staffreports.htm).

"Background Brief: Helping Public Employers and Employees Manage Escalating Health Care Costs", Sheri Heffelfinger, February 2000

"First Key Policy Questions on Disability", Sheri Heffelfinger, February 2000

"Legal Memorandum: Montana Resident Fish and Game Hunting License Requirement Violations by Armed Forces Members Holding or Applying for a License From Another State", David Niss, February 2000

Copies of the above memorandums are available on the State Administration, Public Employee Retirement Systems, and Veterans' Affairs Committee reports website at [http://leg.state.mt.us/Reports/Interim\\_Committees/STATE\\_ADMINISTRATION/staffreports.htm](http://leg.state.mt.us/Reports/Interim_Committees/STATE_ADMINISTRATION/staffreports.htm).

Copies of all memorandums are available from the Legislative Library. To obtain a copy, please call 444-3064 or e-mail a request to <[efurbush@state.mt.us](mailto:efurbush@state.mt.us)>.

## TRANSITION ADVISORY COMMITTEE

To Meet in Billings...The Transition Advisory Committee will meet on the campus of Montana State University-Billings on Thursday, April 20. (Please note that this is a change from the originally scheduled date in April.) The main topic of discussion will be the formation of a Regional Transmission Organization (RTO) to coordinate electricity traffic in the Northwest. An RTO is central to the maintenance and enhancement of system reliability, as well as the effectiveness of wholesale and retail markets. A representative from the Bonneville Power Administration (BPA) will introduce the subject, and TAC members (and others) from utilities, cooperatives, industries, and other consumer groups will be invited to respond.

Other topics will include:

- ▶ the status of Montana Power Company's lawsuit against the Public Service Commission;
- ▶ progress on MPC's transition plan with the PSC;
- ▶ the Montana Electricity Buying Cooperative's 9th Circuit appeal against BPA;
- ▶ the Legislative Consumer Committee's "Key Principles" regarding default supply;
- ▶ the implementation of Universal System Benefit Charges in Montana-Dakota Utilities' service territory; and
- ▶ the outcome of an April 7-9 meeting of the Legislative Council on [Columbia] River Governance in Whitefish.

The meeting will begin at 9 a.m. in the Russell Room in the Student Union Building at MSU-Billings, 1500 N. 30th Street. (University staff remind us all NOT to park in a Reserved or Handicapped spot.)

For additional information, please contact Stephen Maly at (406) 444-3064, or send an e-mail message to <[smaly@state.mt.us](mailto:smaly@state.mt.us)>. Internet users are invited to visit [http://leg.state.us/Interim\\_Committees/TAC](http://leg.state.us/Interim_Committees/TAC).

## PUBLIC INFORMATION SUBCOMMITTEE

Subcommittee Continues HJR 18 Study... The Public Information Subcommittee of the Legislative Council met on the morning of Thursday, March 30, to review their progress to date on determining the feasibility of broadcasting legislative and other state government activities. In addition, the members enjoyed further discussion with representatives of the telecommunications industry, Montana Public Television, and specialists in Internet streaming technologies. The meeting included a brief tour of the Capitol Building, to get a better understanding of the electronic infrastructure that is being included in the renovation, and a look inside a mobile TV production vehicle equipped with a satellite uplink.

To Meet in Bozeman... The Subcommittee's next meeting is scheduled for April 28 at Montana State University in Bozeman. Representatives from community access and low power TV stations, KUSM, telephone cooperatives, internet service providers, and the viewing public will be invited to attend.

The Subcommittee's work plan outline, meeting schedule, and the March Progress Report are accessible to Internet users at the Legislative Council's home page, located at <http://leg.state.mt.us/Services/LegCouncil.htm>. Paper or electronic copies of these same documents, as well as forthcoming reports, are also available on request from Research Analyst Stephen Maly. Call 444-4064 or send an e-mail to <smaly@state.mt.us>.

## BUSINESS, LABOR, AND AGRICULTURE COMMITTEE

Committee Meets in March... The Business, Labor, and Agriculture Committee (BLAC) met March 2 and 3 to discuss public/private competition issues, incentives to preserve agricultural land, and economic development activities in Montana.

Committee Looks at Public/Private Competition... The Committee viewed the preliminary survey results from the public and private sector respondents. The analysis showed that while public/private competition is occurring, it seems to be more intense in specific industry segments. Additionally, many vendors suggested that while they may not be in direct competition with government service providers, they should have an opportunity to demonstrate that an alternative provider could be chosen.

The information gathered by the surveys and the public testimony during the meeting gave rise to a Committee proposal termed "Creating a Competitive Business Environment". The components and steps of the plan will be discussed during the April meeting.

Preservation of Ag Land Considered...Several interest groups attended the discussion of Senate Joint Resolution No. 21, a study investigating incentives to preserve agricultural land. The Committee, encouraged by the interested persons, recommended that the issues associated with the study be included among the growth planning issues being studied by the Montana Consensus Council.

Workers' Compensation Subcommittee Prepares Primer...The Workers' Compensation Subcommittee met March 2. Subcommittee staff presented the first installment of a workers' compensation primer. The purpose of the primer is to assist policymakers and the public in developing a general understanding of workers' compensation issues. The primer highlighted the purpose of workers' compensation systems, summarized medical and indemnity benefits, and described the methods used to compensate injured workers. The primer will be expanded to include information about workers' compensation insurance, the claims process, safety programs, vocational rehabilitation, and fraud investigation.

Subcommittee Looks at "Exclusive Remedy"...In January, the Subcommittee asked Eddy McClure, staff attorney, to look at whether the exclusive remedy of Montana's workers' compensation system may be in jeopardy because of the state's perceived low benefit levels. Workers' compensation is the "exclusive remedy" for injuries that occur at work. McClure explained that exclusive remedy is the "tradeoff" under which employees are guaranteed some form of compensation in exchange for relinquishing tort claims against the employer. She told the Subcommittee that there are no current legal challenges to exclusive remedy based on the level of benefits, and that changes to the existing benefit levels do not need to be motivated by the fear that exclusive remedy is in jeopardy. She did note, however, that employer conduct may lead courts to consider new causes of action, subjecting an employer to tort liability. McClure informed the Subcommittee that the Montana Supreme Court had recently revised the standard of employer liability. In *Sherner v. Conoco, Inc.*, the Court concluded that Montana's workers' compensation law "does not require an injured worker prove an employer intentionally harmed him but only that he prove the act or omission which caused the injury was intentional and malicious."

DOLI Presents Information on Indemnity Payments...Jerry Keck of the Department of Labor and Industry presented historical information on the amount of average indemnity payments on closed and settled claims for temporary total disability and permanent partial disability. The analysis indicates that average indemnity payments for these types of disabilities have been falling since fiscal year 1996. Keck also compared the maximum benefit for a specific type of injury (loss of hand) paid in Montana with surrounding states and with states that have a benefit system similar to Montana's. This type of information does not necessarily provide valid interstate comparisons. In order to obtain a better sense of interstate differences in worker benefit levels, the Department of Labor is conducting a survey of several states.

Subcommittee Looks at Priorities...Given the limited scope of the SJR 15 workers' compensation study, the Subcommittee asked several employer and employee groups to articulate priority issues for the Subcommittee's consideration. The employer representatives generally agreed that the Subcommittee was on the right track. However, the Subcommittee was reminded that the workers' compensation system is a complex beast and that even incremental changes may have unintended consequences. One recommendation suggested that the study be continued next interim. Pam Egan, AFL-CIO, discussed the type and adequacy of benefits, highlighted the economic consequences to an injured worker, and posed the question of whether the system can effectively reduce the frequency of lost-time injury claims. Participants also discussed the significance of the *Sherner* decision.

Subcommittee to Meet April 28...The Workers' Compensation Subcommittee is scheduled to meet April 28 in Room B7 of the Federal Building, Helena. Tentative agenda items include the second installment of the workers' compensation primer, a cost analysis of incremental changes to the system, the results of the interstate survey, safety issues, and the effectiveness of fraud investigations. For additional details about the April meeting contact Jeff Martin by calling (406) 444-3064 or by e-mail at <jmartin@state.mt.us>.

BLAC to Meet in April...The Business, Labor, and Agriculture Committee will meet again on April 19 and 20 in Helena at the Federal Building. Tentative agenda items include:

- ▶ full cost accounting methodologies employed by several solid waste districts;
- ▶ the existing accounting methodology used by state agencies;
- ▶ reviewing other state privatization efforts; and
- ▶ outlining the principles of "Creating a Competitive Business Environment".

If you have any questions regarding the Committee's April meeting or other activities, please contact Gordy Higgins at 444-3064 or by e-mail at <gohiggins@state.mt.us>.

## CAPITOL RENOVATION

Renovation on Schedule...According to the Department of Administration, the general contractor on the Capitol renovation project is on track to complete at least the lower level, first floor, and second floor by May 17. There are a number of "finish" items that need to be done outside of the general contract. However, Department personnel remained confident as recently as March 20 that the building would accommodate offices moving back beginning in early June. During the transition back into the building, things will remain in an unfinished state in that

there will be protective coverings on the new tile floors and woodwork. Extensive other work will remain to be done on the third and fourth floors, west wing, and cafeteria area as well as on the outside of the building. Next month, a more detailed update on the status of the project will be published in **THE INTERIM**.

## LEGISLATIVE COUNCIL

Council Meets in March...The Legislative Council met in Helena on March 30 and 31. The Council continued work on its major strategic issues of improving the public information aspect of the legislative operation and improving legislator training and preparation. A complete report of the meeting will be published in **THE INTERIM** next month.

The next scheduled Legislative Council meeting is June 9. Copies of reports, minutes, and other Legislative Council information is available on the web at <http://leg.state.mt.us/Services/LegCouncil.htm>.

## ENVIRONMENTAL QUALITY COUNCIL

Environmental Quality Council Meets in Billings...The Environmental Quality Council (EQC) met in Billings on March 24. The EQC heard reports on coal bed methane and Lockwood water quality issues. The EQC also took a tour of the Exxon Refinery. The EQC will hold its next meeting in Helena on May 5.

To view the EQC's or any Subcommittee's minutes from previous meetings or Council and subcommittee work plans, agendas, and press releases, please visit the EQC web site at <http://leg.state.mt.us/Services/lepo/index.htm>. If you have any questions or would like additional information or to be placed on the EQC interested persons mailing list, contact Todd Everts by phone at 444-3747 or by e-mail at <teverts@state.mt.us> .

Montana Environmental Policy Act (MEPA ) Study...The MEPA Subcommittee met on March 23 in Billings. The Subcommittee reviewed information from the Montana Consensus Council on the MEPA public participation survey results. The Subcommittee also reviewed the draft interim study report, chapters 4 through 7 and heard public comment on the SJR 18 MEPA study.

The MEPA Subcommittee will next meet in Helena on Friday, April 14 in the Department of Environmental Quality's Director's Conference Room in the Metcalf Building. The Subcommittee will begin formulating its findings and recommendations on the SJR 18 study.

For more information contact Todd Everts at 444-3747 or by e-mail at <teverts@state.mt.us> or Larry Mitchell at 444-1352 or by e-mail at

<lamitchell@state.mt.us>.

Eminent Domain Issues...The Eminent Domain Subcommittee held a meeting in Billings on Thursday, March 23 on the Montana State University-Billings Campus. The Subcommittee also held a public hearing in the evening from 6:30-8:30. The first hour of the meeting was broadcast to MetNet sites in Miles City and Glasgow. The use of MetNet sites allowed for greater public participation. The public hearing was host to nearly 100 people interested in testifying on Montana's eminent domain laws and their adequacy.

At the regular meeting of the Subcommittee, members discussed the contents of the draft eminent domain handbook, industry insight into the use of eminent domain; and draft findings and draft recommendations on:

- ▶ federal/state relationship with regard to eminent domain;
- ▶ reversion of property;
- ▶ mitigation measures;
- ▶ standards and specifications;
- ▶ possession of property by the condemnor;
- ▶ liability;
- ▶ use of the interest taken through condemnation;
- ▶ due process;
- ▶ burden of proof;
- ▶ rights of reentry;
- ▶ type of interest taken; and
- ▶ public uses.

The next meeting of the EQC Eminent Domain subcommittee will be held on April 12 in Helena. The location of the meeting will be available on the EQC website or by contacting staff listed below.

If you are interested in reviewing what the Subcommittee discussed or to view the minutes from previous meetings, please visit the EQC website at <http://leg.state.mt.us/Services/lepo/index.htm>. If you have questions or would like additional information please contact Krista Lee at 444-3957 or by e-mail at <klee@state.mt.us> or Gordy Higgins at 444-9280 or by e-mail at <gohiggins@state.mt.us>.

Water Policy...The EQC's Water Policy Subcommittee will meet again on May 4 or 5 in Helena. In addition, members plan to hold a joint subcommittee meeting with the EQC's Land Use/Environmental Trends Subcommittee to learn about water quality monitoring efforts and what can be learned about trends in water quality from the data collected (see Land Use/Environmental Trends below for more information). Subcommittee work plans, agendas and minutes are available on the EQC website: <http://leg.state.mt.us/Services/lepo/index.htm>. For more information, contact Mary Vandenbosch by phone at 444-5367 or by e-mail at <mvandenbosch@state.mt.us>.

Land Use/Environmental Trends...The EQC's Land Use/Environmental Trends Subcommittee met in Billings on March 23. The Subcommittee heard an informative briefing from Dennis Glick of the Montana Smart Growth Coalition and Stuart Meck and Marya Morris from the American Planning Association (APA). The Coalition has initiated a project with the Growing Smart Program of the APA to evaluate Montana laws, policies, and court decisions related to planning and land development in order to assess the need for changes in the laws. Facilitated focus groups have been conducted in different parts of the state. A follow-up questionnaire will be administered to individuals around Montana who were unable to attend the focus groups.

Subcommittee members will participate in a Growth Policy Forum facilitated by the Montana Consensus Council on April 6. The forum will bring together representatives involved with various initiatives related to growth policy in Montana. The forum will provide an opportunity to identify areas of overlap and explore opportunities to work together.

The Subcommittee decided to hold a joint meeting with the Water Policy Subcommittee in late April, May, or June to learn about water quality monitoring activities and how the data collected can be used to evaluate trends in water quality and guide management of environmental programs as well as policy development and to hold a panel discussion with state agencies with responsibility for environmental programs. Panel members will be asked for their suggestions regarding environmental indicators that can be used to monitor environmental trends over time. Furthermore, the Subcommittees would like feedback about how the information can be made available to the public and used by the agencies as well as the EQC to evaluate programs and policies.

The Subcommittee will meet again on May 4 or 5 in Helena. Agenda topics include:

- ▶ a discussion of whether or not additional funding is needed for local governments to develop and implement growth policies. Organizations with an interest in land use planning or local government will be invited to share their perspective on this question as well as potential funding sources; and
- ▶ a review and discussion of information collected about local efforts to address residential development in riparian areas.

Subcommittee work plans, agendas and minutes are available on the EQC web site at <http://leg.state.mt.us/Services/lepo/index.htm>. For more information, please contact Mary Vandenbosch by phone at 444-5367 or by e-mail at <[mvandenbosch@state.mt.us](mailto:mvandenbosch@state.mt.us)>.

## LAW, JUSTICE, AND INDIAN AFFAIRS COMMITTEE

To Visit Blackfeet Reservation...The Law, Justice, and Indian Affairs Committee is once again taking its show on the road for its April meeting. April 13 will find the Committee in Browning, touring facilities on the Blackfeet Reservation, meeting with tribal officials, and visiting with tribal members. Individuals on the Committee's interested persons list will be receiving information about the Committee's meeting place and time in Browning as soon as those details are finalized.

To Tour Private Prison...On the morning of April 14, Committee members will tour the Crossroads Correctional Center in Shelby, hosted by Warden Jim McDonald. The tour will include the portion of the prison that is currently housing 39 female inmates transferred from New Mexico this winter.

Items on the agenda during the afternoon of April 14 include a report from Mary LaFond, Governor's Office of Budget and Program Planning, discussing her study of Montana offenders. LaFond randomly selected an assortment of offenders from various areas of the correctional and juvenile justice system and documented their experiences over a 2-year period. The report is in the final stages of production and will have just been finalized by the meeting date. LaFond will have some unique insights and valuable information to share with the Committee.

The Committee will also receive a demonstration of the Department of Corrections' new data system, PRO-Files (Programmed Reporting of Offender Files), which the Department describes as "a department-wide knowledge warehouse about offenders". PRO-Files will eventually replace ACIS (Adult Correctional Information System) as well as provide additional information and enhanced data retrieval. Phase I of the PRO-Files project will include the following offender information: identity and description; legal record; hearings, sanctions, and incidents; providers; movements to and from facilities and through programs; custody classification; medical status; and work assignment. Phase II will include county jail holds, risk and needs assessment, treatment programs, good time, and Board of Pardons data.

Rounding out the afternoon of the 14th will be a discussion about the future direction of the sentencing study and a public comment period. The meeting will be held in the Inmate Visitation Room at the Crossroads Correctional Center, and the public portion following the Committee's tour will begin at 1 p.m. Anyone wishing to attend the meeting on April 14 must be prepared to comply with the prison's routine security measures in order to enter the facility. These include leaving any purses, bags, and tobacco products outside the facility, presenting a photo identification, checking in keys, and passing through the metal detector. Prison staff will be on hand at the entrance to assist with the security procedures.

For more information about the Law, Justice, and Indian Affairs Committee or the April meeting in Browning and Shelby, contact Leanne Kurtz, Committee Staff, at 444-3064, via e-mail at <lekkurtz@state.mt.us> or visit the Committee's web site

at [http://leg.state.mt.us/Interim\\_Committees/LAW JUSTICE/index.htm](http://leg.state.mt.us/Interim_Committees/LAW JUSTICE/index.htm).

## LEGISLATIVE FINANCE COMMITTEE

LFC Meets in March...The Legislative Finance Committee (LFC) met in Helena on March 9 to hear a number of reports and discuss several issues. Key issues discussed are summarized below.

General Fund Status...Terry Johnson, Principal Fiscal Analyst, presented an update on the status of the general fund account. There has been considerable speculation about the projected ending fund balance due to the court decision on HB 260 and the potential for a special session. The general fund balance at the end of the 2001 biennium was projected by the Legislature to be \$51.5 million (including \$28.2 million of tobacco funds set aside for revenue stabilization). If revenue trends continue, revenues are now expected to exceed legislative projections by at least \$86 million, as the ending fund balance is now conservatively projected to be \$138 million. The excess over projections is due primarily to a growth in individual income tax collections, as well as a fund balance adjustment. A review of 1998 individual income tax collections showed a growth in wage and salary income of Montanans by 6.5 percent (4.3 percent was projected), and a growth in capital gains income by nearly 30 percent (no growth was projected). Corporate income tax collections have also been strong, although Montana Power Company capital gains projections of \$30 million due to electrical generation asset sales may be less than anticipated. In addition, oil prices and some metalliferous mines taxes have increased dramatically and could contribute to even higher ending general fund balances.

The estimate of \$138 million should be viewed as conservative since the income tax estimates do not assume a continuation in wage/salary and capital gains income growth rates observed in 1998. Also not included is the potential revenue from the currently volatile oil and metalliferous mines tax revenues. If a special session is scheduled, revised general fund revenue estimates will be prepared by the Legislative Fiscal Division for the significant revenue sources.

HB 64: 15 Percent Base Reductions...Jon Moe, Fiscal Specialist with the Legislative Fiscal Division (LFD), presented an overview on the implementation of HB 64, codified as 17-7-111(3)(g), MCA, as part of the statute relating to the preparation of the state budget. It requires that agencies with more than 20 FTE submit to the Budget Director, "a plan to reduce the proposed budget to 85% of the current base budget." The plans will be developed as "what if" scenarios to assist the Governor and the Legislature in assessing priorities. The target amount of the plan would be 15 percent of the "base budget" and would apply to all fund sources, but 15 percent of the agencies' general funds must be targeted in the plan. The reduction plans are not to be automatic cut lists but rather provide a prioritization

of base expenditures that become most valuable in times of revenue shortfalls. It adds some flexibility to the budget deliberation process by providing more information to the subcommittees for review. For more information, contact Jon Moe, Fiscal Specialist, Legislative Fiscal Division, at 444-2986.

SABHRS Update...A report was presented by Greg DeWitt, Senior Fiscal Analyst, that highlighted the problems and frustrations of users of the Statewide Accounting Budgeting and Human Resources System (SABHRS) during the early stages of system implementation. The report updated the Committee on the current status of SABHRS implementation and on the planned upgrades to the system. The report identified concerns with the system that includes:

- ▶ increased staffing needs to implement system upgrades;
- ▶ system design that takes longer than the old statewide accounting and payroll systems to enter accounting and payroll transactions;
- ▶ potential fiscal 2000 year-end closing delays; and
- ▶ data security issues.

LFD staff will continue to monitor the progress of SABHRS implementation, as the success of the system meeting the stated goals and efficiencies is still in question.

Metal Mines Performance Bonds/Liability..Roger Lloyd, Senior Fiscal Analyst, presented an analysis entitled "Metal Mines Performance Bonds and State Liability: Are There any Deficiencies?" to the LFC. The analysis indicated that the state may have to pay an estimated \$1.1 million for mine reclamation during the 2001 biennium. This figure includes an estimated \$600,000 general fund that the Department of Environmental Quality may request be appropriated by the 2001 Legislature. In addition, the analysis identified a liability of \$24.6 million and an unidentifiable amount of potential liability. Twenty underlying deficiencies and causes of the problems were identified and discussed. Possible solutions to the problems for the Committee to consider were offered. The chairman appointed a subcommittee comprised of Senators Jergeson and Beck, and Representatives Tropila and Taylor to discuss the analysis. A one-day meeting is being planned for the week of April 17. Please contact Roger Lloyd at 444-2986 (e-mail: rlloyd@state.mt.us) for copies of the analysis.

DPHHS Budget Status Reports/Potential for Supplemental Request...Lois Steinbeck, Senior Fiscal Analyst, presented a report to the Committee on the Department of Public Health and Human Services (DPHHS) budget status and the potential for a supplemental appropriation request. The most recent budget status report from DPHHS projects a reversion of \$136,000 in fiscal year 2000 (about one 600th of 1 percent of the total general fund appropriated to DPHHS). Several key assumptions made by DPHHS resulted in the projection of the small reversion:

- (1) \$1.3 million of TANF funds, rather than general fund as directed in HB 2, are transferred to the Disability Services Division (DSD) to replace federal

Title XX grant funds which were reduced.

- (2) Tobacco control and CHIP appropriations are used to fund \$3.3 million in general fund shortfalls.
- (3) There is not a shortfall in the general fund needed for the Temporary Assistance for Needy Families (TANF) block grant maintenance of effort (MOE).

The LFD report reviewed each of these assumptions and raised issues related to the TANF block grant MOE shortfall, identification of other ways that DPHHS can offset general fund costs, the potential for general fund cost over-runs in fiscal 2001, and general fund base adjustments for the 2003 biennium. The Legislature may receive a request for at least \$9.6 million general fund in base budget adjustments for the 2003 biennium, unless DPHHS reduces services or finds efficiencies and savings within programs.

There are several ways that DPHHS can offset current general fund expenditures with federal funds and reduce the likelihood for additional general fund resources in this biennium. These options were identified through LFD staff research in maximizing the flexibility in funding mental health services for the HJR 35 Subcommittee study of public mental health services. The options for DPHHS to offset general fund expenditures include:

- (1) the possible use of TANF funds for some services related to mental health needs;
- (2) the possibility that some Mental Health Service Plan (MHSP) general fund expenditures may be able to be counted toward TANF MOE; and
- (3) the use of CHIP funds to offset general fund MHSP costs.

However, these three options are mutually exclusive, and at most only one of the options may be implemented.

Prison Population Trends...Lorene Thorson, Senior Fiscal Analyst, briefed the Committee on how the current trends in the adult inmate population would impact the Department of Correction's budget in fiscal year 2000. The Department estimates that current trends could result in 55 more male inmates and 18 fewer female inmates than the population estimates used by the 56th Legislature. If these trends hold, the estimated cost of the population change would be an increased cost of \$268,270 that the Department would need to find within its budget or request in a supplemental from FY 2001 funds.

To Meet Again in June...The LFC set its next meeting for Thursday and Friday, June 8 and 9, commencing at 1 p.m. on Thursday. The meeting will be held in Room B7 of the Federal Building, or in a 1st floor committee room in the Capitol Building if construction is complete.

## SUBCOMMITTEE ON STATUTORY APPROPRIATIONS AND DEDICATED REVENUE

Subcommittee Meets in March... The SB 378 Subcommittee on Statutory Appropriations and Dedicated Revenue was briefed by the Department of Environmental Quality on the financial assurance mechanisms for underground storage tanks and use of the Petroleum Tank Release Cleanup Fund.

The Subcommittee reviewed statutory appropriations added by the 56th Legislature in relation to the guidelines provided in statute. The Subcommittee did not recommend any changes to the new statutory appropriations. Carol Ferguson, Administrative Officer of the Hard Rock Mining Impact Board, requested reinstatement of the hard-rock mining statutory appropriation (90-6-331, MCA) eliminated during the 1999 session in HB 69. The Subcommittee voted unanimously to recommend to the Legislative Finance Committee that the transfer of funds required by 90-6-331, MCA, be a statutory appropriation.

Subcommittee to Meet in June... The Subcommittee narrowed its review this biennium to the analysis of state special revenue accounts where the revenue source is fines or forfeitures. These accounts and the lodging facility use tax will be topics for discussion at the June meeting, currently scheduled for June 8 in Room 487 of the Federal Building.

## INFORMATION TECHNOLOGY MANAGEMENT STUDY SUBCOMMITTEE

Two Major Agenda Items at March Meeting... The Information Technology (IT) Management Study Subcommittee of the Legislative Finance Committee addressed two major agenda items at its March meeting:

- ▶ a discussion of information technology governance concepts and examples of best practices in other states; and
- ▶ a discussion of options available for the Legislature to review the Unified Computer Budget Summary in the 2001 legislative session.

Subcommittee Looks at Governance... A consultant from the national IT consulting firm, META Group, presented governance concepts and other states' best practices to the IT Subcommittee.

The Subcommittee selected IT governance structure concepts for further research, including legislative guiding principles for IT, a governance board, and the formation of a "Chief Information Officer" (CIO) at the cabinet level. The Subcommittee also wants to consider keeping the IT governance structure as it currently exists, but strengthening it to address legislative concerns.

The Subcommittee directed staff to research how other states utilize similar IT governance structures, how Montana's current governance structure compares to the proposed governance structures, and any fiscal impact of changing the governance structure. This information will be presented at the June 7 Subcommittee meeting. Staff expect IT governance decisions will be made at the June meeting.

Legislative Process for Reviewing IT Budgets... The Subcommittee evaluated options available for the Legislature to review the Unified Computer Budget Summary in the 2001 legislative session. To focus the decision process, two main questions were asked:

- (1) What legislative committee is right to review the Unified Computer Budget Summary?
- (2) What is the appropriate level of decision involvement for the committee?

The IT Management Study Subcommittee recommends that a select subcommittee should be formed to address IT-related appropriation issues during the 2001 Legislature. In keeping with HB 2 language, the select subcommittee would be made up of members from the House Committee on Appropriations and the Senate Finance and Claims Committee. The IT Management Study Subcommittee recommends that the select subcommittee include 12 members comprised of 2 members from each of the joint appropriations subcommittees, including the Long Range Planning Subcommittee, with equal representation by legislative chamber and party.

The IT Management Study Subcommittee also recommends that the select subcommittee should:

- ▶ hear the Unified Computer Budget Summary;
- ▶ make policy decisions related to the IT budget requests contained in the Unified Computer Budget Summary;
- ▶ approve the internal service rates for the Information Services Division of the Department of Administration; and
- ▶ make budget decisions for major IT projects and report its action to the House Appropriations Committee.

The LFC deferred action on the IT Subcommittee's recommendation until its next meeting on June 7.

For more information or if you wish to be placed on the Subcommittee's interested persons list, please contact Pam Joehler or Greg DeWitt by phone at (406) 444-2986, by e-mail at <[pjoehler@state.mt.us](mailto:pjoehler@state.mt.us)> or <[gdewitt@state.mt.us](mailto:gdewitt@state.mt.us)>, or by mail to the Legislative Fiscal Division, PO Box 201711, Helena, MT 59620-1711.

## MENTAL HEALTH MANAGED CARE SUBCOMMITTEE

Subcommittee Meets in March... The Mental Health Managed Care Subcommittee met on March 8. The Subcommittee heard several reports focusing on mentally ill persons in county jails, training for law enforcement officials in dealing with mentally ill persons, an update on the construction of the new state hospital, and funding flexibility for mental health services.

Mentally Ill Persons in County Jails... The Montana Advocacy Program surveyed county jails in Montana and requested information relative to the incidence of persons with a serious and disabling mental illness (SDMI) in jails and the services provided to them. Survey responses were received from about one-third of the county jails in Montana. The survey design will not necessarily produce statistically valid information, but does provide information from local law enforcement. Alexandra Volgerts reported that:

- ▶ about 25 percent of the survey respondents indicated that 6 to 10 percent of their inmates had a SDMI while the remainder of the respondents indicated an incidence of 1 to 5 percent;
- ▶ about half of the respondents used a screening tool to identify mental health issues and such tools used no more than 3 to 5 questions;
- ▶ about a third of the respondents provide between 10 to 50 inmates with psychotropic medications each month;
- ▶ medications were usually available within 24 hours, but the amount of time it took to obtain a prescription and authorization for medication varied widely;
- ▶ almost 90 percent of respondents had 24 hour crisis services available in the community, but 80 percent indicated there were no inpatient hospital beds in the community;
- ▶ one third of respondents indicated that they had detained a person with SDMI on no charges or on petty charges to protect the person or community;
- ▶ 50 percent of respondents indicated that they provided no discharge planning; and
- ▶ nearly all respondents reported responsibility for transporting persons to Montana State Hospital (MSH) for commitment or diversion and only one respondent reported using an ambulance for transport.

Sharon Howard described the integrated health services model used in the new Cascade County Regional Jail. Both physical and mental health services are provided. Nurse practitioners, nurses, nursing students, and a psychologist provide most of the hands-on care, and other services, including psychiatry, are provided through contracts. Physical and mental health services for the 360 bed facility are 20 hours per week by a health services administrator, 100 hours per week by three nurse practitioners to provide triage, treatment and medication rounds, and 20 hours per week for administrative assistance and medical record management. Sick call

is conducted five times per week for four hours each time. Between 80 to 100 inmates are seen in the clinic. Medication costs average \$10,000 per month and laboratory costs average \$1,000 per month.

In particular Ms. Howard described experiences with individual persons with SDMI. One person, in their 30's, had been arrested several times and brought to the county jail. This person had been admitted to the Montana State Hospital seven times. The county jail had helped plan community services for the person on discharge from the county jail, but had been called several times when the person relapsed.

Training for Law Enforcement Officers... The Subcommittee heard a staff report on training for law enforcement officers in recognizing and dealing with a person with SDMI. Some training is provided by the Law Enforcement Academy, but there is no "refresher" or ongoing training. The Subcommittee will continue to consider the issue of law enforcement training for possible recommendations to the Legislative Finance Committee.

Flexibility in Funding Mental Health Services... The Subcommittee heard a staff report about creating flexibility in funding mental health services. One of the barriers to developing appropriate community mental health services is the inflexibility of funding streams. General fund is the most flexible funding source, but is limited. Medicaid is the most significant source of funds, but states that opt to participate in the Medicaid program must abide by universal criteria. Federal statutes and rules governing the Medicaid program require that services included in the Medicaid state plan be available statewide, participants have freedom to choose among participating providers, and any willing provider, meeting Medicaid participation criteria, must be able to participate in the Medicaid program.

If a state wishes to limit statewide availability or consumer choice, it must obtain a waiver of those program criteria. If a state wishes to limit provider participation it must obtain a waiver and follow federal procurement guidelines, which require a competitive bid process.

Federal Medicaid program criteria also specify how states may reimburse services and what services are eligible for reimbursement. Fee-for-service and some types of reimbursement of services grouped together are allowable. However, if a state wishes to fund unique services or utilize unique reimbursement mechanisms, it most likely will need a waiver of federal Medicaid criteria. Depending on program design and type of waiver sought, federal approval can take up to two years.

The Social Security Act, establishing the Medicaid program, contains a specific provision called a prepaid health plan (PHP) that allows states some flexibility in combining and reimbursing services that might otherwise require a waiver. For instance, a PHP allows states to use a capitated reimbursement method (a set monthly fee for each person eligible for the service). The capitated payment rate for a PHP cannot be greater than the upper payment limit. Generally, the upper payment limit is the amount that a state would have paid for Medicaid services in the fee-for-service system. Only the expenditures made for the Medicaid



## Special session -- Breaking information

The Governor has called a special legislative session to begin May 8 at 9:00 a.m. While some reports have indicated the call is for a certain number of days, it is not so. Only the legislature can determine how long a special session may last. A copy of the call will be sent by the Governor's office to all legislators. Senate President Bruce Crippen and House Speaker John Mercer are working with Senate, House, and Legislative Services Division staff to finalize details regarding space and other facility arrangements. Current plans are for the Senate to meet at the Scott Hart Auditorium, 302 North Roberts, and for the House to meet in the Department of Public Health and Human Services Auditorium, 111 North Sanders. Ancillary rooms for committee meetings, leadership offices, and staff support offices are being worked out. Facilities will be somewhat restricted, but efforts are being made to make the spaces work as well as possible. Prior to the session, each legislator will receive more detailed information as to the location of meeting spaces, parking, and other logistical details.

Bill drafting requests must concern subjects that are within the limitations of the call issued by the Governor. Greg Petesch will make an initial determination as to whether a bill is within the call. Appeal is to the Joint Rules Committee, which most likely will meet prior to May 8.

As further information develops, we will post it on the web at the Branch site under "2000 Session" <http://leg.state.mt.us/> .

-- Bob Person  
Executive Director  
Legislative Services Division

reimbursable services included in the PHP can be used to determine the upper payment limit and subsequently the capitation rate.

States have determined capitated rates based on actuarial analysis as did DPHHS in determining Mental Health Access Plan (MHAP) payment rates, and states have determined capitated rates based on fee-for-service data compiled by state staff without the assistance of an actuary. HCFA reviews calculation of the upper payment limit.

States can combine any number of services in the PHP, including services not eligible for Medicaid funding. But the state cannot claim federal financial participation for those services or raise payments beyond the upper payment limit to fund those services.

The philosophy of a PHP is like that envisioned for MHAP and recent pilot projects undertaken by DPHHS. Providing appropriate services at the appropriate time, especially appropriate services in the community, should achieve savings by shortening length of stay or preventing placement in higher- end, more expensive services. States do not have to follow federal procurement guidelines or obtain a waiver if any willing provider can participate in the PHP.

The staff report also noted three ways that current mental health general fund expenditures could be offset, thereby freeing up general fund to offset the projected deficit and, if sufficient, to provide new, unique services. Admittedly adding new federal funding sources to mental health services conflicts with the original goal of improving funding flexibility. General fund could be freed up by:

- ▶ using federal Children's Health Insurance Program (CHIP) funds to pay for 80 percent of the costs of children eligible for both CHIP and the Mental Health Services Plan (MHSP);
- ▶ counting MHSP general fund costs toward the state maintenance of effort required to draw down the Temporary Assistance for Needy Family (TANF) block grant; or
- ▶ using TANF block grant funds to pay for some services for adults who qualify for MHSP.

The Subcommittee directed the staff and DPHHS staff to continue working on the issues related to PHPs and alternative funding sources.

Oversight Issue: Medicaid Program Administration... Part of the staff report on funding flexibility identified an issue of compliance with federal Medicaid criteria. The resolution authorizing the interim legislative study of public mental health services also directed the LFC to undertake certain types of oversight as part of its interim study. Among several items enumerated in HJR 35, the Legislature directed that the study undertake a "review of the Department of Public Health and Human Services staffing levels, contract auditing and compliance capabilities and performance, and any imposition of sanctions." While federal agencies have not raised compliance issues or imposed sanctions, the manner in which mental health services pilot and demonstration projects have been structured, the types of services reimbursed, and providers selected may have violated federal Medicaid criteria and



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federal procurement policies.

DPHHS funded two pilot programs and authorized a demonstration project that ran from December through the end of March. In all three instances, provider participation was limited and services were not available statewide, but DPHHS did not follow federal procurement guidelines nor did it obtain a waiver of federal Medicaid program criteria.

Compliance with Medicaid criteria is prospective, meaning that states are given time to come into compliance. If a state fails to comply, federal financial participation in the Medicaid program can be withdrawn. Penalties are rarely assessed.

DPHHS has ended the demonstration project and indicated that the services provided by the two pilot programs will be implemented statewide and that any provider who wants to participate in the former pilot program can do so. DPHHS has also indicated that it cannot fund future demonstration and pilot projects with Medicaid funds without a waiver of relevant federal criteria and without following applicable federal procurement guidelines if provider participation is limited.

State Hospital Construction...The Subcommittee heard testimony that the new state hospital is not completed yet. Lois Menzies, Director of the Department of Administration (DOA), is negotiating with the construction company for the assessment of penalties and fines for delays. The company has claimed that some of the delay was beyond their control due to weather and labor strikes. DOA has withheld \$1 million in payments pending resolution of the issue.

State Hospital Census...The average daily population at the Montana State Hospital was 148 in January, which is lower than the census for the previous 10 years. Despite its historic low level, the census is still higher than the level of 135 projected by the Department of Public Health and Human Services (DPHHS) and included in its 2001 biennium budget request. The Department is projecting a \$1.3 million general fund shortfall in the mental health services budget. General fund transfers from other divisions are anticipated to cover the shortfall according to information in the latest budget status report prepared by the Department.

MHAP Claims...Jacqueline Lemark presented information on the transition from the Mental Health Access Plan (MHAP) managed by Magellan Behavioral Health Services to the new fee-for-service mental health plan administered by DPHHS. There are still claims that are being settled, although the dollar amount of those claims was not available. The Subcommittee asked for additional information, including the amount of claims paid when the state assumed the financial risk for MHAP beginning May 1.

## STATE ADMINISTRATION, PUBLIC EMPLOYEE RETIREMENT SYSTEMS, AND VETERANS' AFFAIRS COMMITTEE

SJR 9 Study Nears Completion...The State Administration, Public Employee Retirement Systems, and Veterans' Affairs Committee (SAIC) is nearing completion of its examination of state contracting laws. To date, the SAIC has reviewed and is slated to act on a number of issues, including:

- ▶ draft legislation setting certain interest rates applicable to late payments for contracts. For payments that are late due to negligence by the state, the rate is 18.25% annually. For payments that are late due to contract disputes between the state and a vendor, the rate is 10% annually. (The bill draft's preamble states the rationale for the two different rates.);
- ▶ draft legislation clarifying that the Montana Procurement Act applies generally to the expenditure of "public funds" and to the private use of state assets whenever the use is for profit. (Examples of the private use of state assets includes ATM machines, cafeterias, or rest areas on state property or payment of an energy consultant from publically held funds.);
- ▶ draft legislation to ensure that the Montana Procurement Act generally applies to the expenditure and distribution of grant money, whether the expenditure is made by the State or by an entity to which money is granted from the State;
- ▶ draft legislation clarifying that the Montana Procurement Act applies to all state entities unless a specific exemption is granted by the act;
- ▶ draft legislation clarifying the prohibition against a current or former public employee's interest in a public contract in order to protect the employee's rights but to also ensure the integrity of the process of soliciting and awarding contracts;
- ▶ draft legislation eliminating the contested case hearing step in the current three-step protest process established in 18-4-242, MCA. Under the revisions, the bidder or offerer could still file a protest -- to be answered by the department -- but if the protest is not resolved to the protester's satisfaction, then the protester's next step would be to pursue court action rather than a contested case hearing under the Montana Administrative Procedure Act (MAPA);
- ▶ an outline of a program expanding "outreach" efforts by the State to current and potential vendors;

- ▶ an outline of a program for certification and training of procurement professionals and contract managers. The program may require all or some State procurement officials to obtain a national procurement certification. This option is to establish certification as a requisite for new employees, base an agency's procurement delegation authority on the level of certified procurement officials in the agency, or both. The program outline also addresses the development and delivery of targeted training for contract administrators on an on-going basis. Alternatively or in conjunction, the program could establish a State-directed procurement certification process. State-specific training courses would be developed and delivered, and a certification program managed. State procurement officials and contract administrators would be required to attend;
- ▶ an outline of a program to assess procurement, contract management, and contract enforcement staffing needs throughout state government;
- ▶ identification of any barriers precluding or frustrating the efforts of "small businesses" to gain contracts with the State. The examination will include an assessment of contract boilerplate, administrative rules, and statutes as barriers;

Issues previously introduced but that were not discussed in detail until the March 30 SAIC meeting include:

- ▶ contract preferences for Montana (resident) businesses and for the use of Montana-made products. Evidence provided to the SAIC suggests that the preferences may be a significant detriment to Montana small businesses attempting to gain contracts in other jurisdictions while providing little, if any, benefit to resident businesses;
- ▶ designing and authorizing additional methods for procuring goods and services. In particular, statutory guidelines may not be adequate to address current needs for obtaining a range of professional and technical services, human services, or information technology (both hardware, software, and services), to list a few areas worthy of consideration; and
- ▶ staff identification of the impact to the state economy of contracts entered into between the State and vendors.

Although the March 30 meeting is anticipated to be largely a Committee work session, testimony and comments will be entertained as appropriate. The work of the SAIC on the SJR 9 study of state contracting is anticipated to be essentially complete following the May 18-19 meeting, at which the SAIC will be scheduled to review, refine, and adopt its findings, conclusions, and recommendations. Questions regarding the SJR 9 study of state contracting may be directed to Dave Bohyer, Research Director, at 444-3064 or by e-mail to <[dbohyer@state.mt.us](mailto:dbohyer@state.mt.us)>.

Disability Study...At its February 29 meeting, the Disability and Retiree Health Care Subcommittee received a staff report providing background information relevant to the Subcommittee's examination of disability benefits for public employees. The information showed that:

- ▶ people in their 30s are three times more likely to suffer a disability lasting three months or longer than they are likely to die;
- ▶ nearly 33% of the total population will suffer a serious disability between the ages of 35 and 65;
- ▶ the average disability will last more than 5 years, and for 30% of those disabled, the disability will persist for life; and
- ▶ the probability of disability i.e., the risk and, therefore, the cost of disability insurance, increases with age; and the probability increases at a faster rate the older a person becomes.

After considering current disability provisions and receiving an update on previous legislative deliberations, the Subcommittee decided that some type of disability coverage should be available to all public employees under the Public Employees' Retirement System (PERS), regardless of whether the employee decides to belong to the PERS defined benefit plan, which is the current retirement plan for general state and local employees, or whether the employee opts to join the defined contribution plan, which will be available to PERS members by July 1, 2002.

Disability plan design and funding were major topics of discussion on March 30. One of the options considered was to provide members of the defined contribution (DC) retirement plan with the same disability benefit now provided in the defined benefit (DB) plan. Under this option, if a vested member (with at least 5 years of service) of either the DB or the DC plan becomes disabled, the member would receive a disability retirement benefit based on the DB retirement formula of  $1/56 \times \text{final average salary} \times \text{years of service}$ . This benefit is already funded within the DB plan, but for DC plan members, funding would be provided by employer contributions and would, therefore, reduce employer contributions to individual member DC plan accounts.

A second option was to provide a long-term disability plan through either a self-insured fund or by purchasing insurance from a private provider. Under this option, the disability plan would provide disability benefits based on an income replacement ratio rather than a retirement benefit formula and would be offset by any income received from the employee's retirement plan as a result of the disability. Employer and/or employee contributions would either be made in addition to current contributions to the retirement plan or taken from current retirement plan contributions.

Retiree Health Care Study...At its February 29 meeting, the Disability and Retiree Health Care Subcommittee decided to continue its examination of retiree health care issues. At its March 31, meeting, the Subcommittee examined the advantages and disadvantages of Voluntary Employee Benefit Association (VEBA) accounts and accounts set up under IRC section 401(h) as a means of financing

health benefits for retirees.

Governed under IRC Section 501(c)(9), a VEBA is a trust account that VEBA members can use to pay certain medical expenses for themselves, their dependents, and their beneficiaries. A VEBA trust fund is completely separate from a pension trust fund and is either controlled by VEBA members or by an independent board of trustees. Provided that the VEBA is qualified (through an IRS determination letter), employer contributions to the VEBA are tax exempt. There seems to be some controversies about whether employee contributions must be after-tax. Some analysts maintain a VEBA may be designed so employee contributions can be made on a pre-tax basis, while others argue that only employer contributions are pre-tax. The medical benefits paid from a VEBA are not taxable if paid from employer contributions. However, the tax treatment of benefits funded by employee contributions presents another area of controversy about IRS laws.

Under IRC Section 401(h), a pension plan may establish a separate account within its trust fund to pay benefits for sickness, accident, hospitalization, and medical expenses of retired employees, their spouses, and their dependents. Employer contributions to the 401(h) are tax exempt. Employee contributions are after-tax. Benefits are not taxable, but may only be used after retirement. Furthermore, 401(h) accounts must be subordinate to pension trust fund obligations (that is, the obligation to pay retirement benefits comes first) and the health benefits may be reduced.

#### VEBA Advantages Over the 401(h):

- ▶ VEBA assets may be invested with more latitude to gain potentially higher rates of return than in a 401(h) pension plan sub-account.
- ▶ Contributions to a VEBA are not subject to IRS contribution limits imposed on pension plans.
- ▶ VEBA's provide benefit payments to active as well as retired employees.
- ▶ VEBA benefits are not subordinate to pension plan obligations.

#### 401(h) Advantages Over the VEBA:

- ▶ Administration of a 401(h) account is easier than for a VEBA because it can be done within existing pension plan's operational structure, while a VEBA requires a new and independent structure.
- ▶ IRS laws are more well-defined with regard to 401(h) accounts, whereas VEBA design and operation involves some controversies about how IRS tax laws are applied.

The next meeting of the Disability and Retiree Health Care Subcommittee will most likely be on May 18, unless rescheduling is required due to plans for a special legislative session.

Military and Veterans' Affairs Subcommittee...In February, the Subcommittee on Military and Veterans' Affairs discussed homeless veteran issues and heard

presentations from representatives of state agencies providing services, including:

- ▶ the state's emergency shelter program under DPHHS, which helps coordinate grant applications for HUD-funded homeless projects;
- ▶ the local Job Service Office, which helps coordinate job training and skills for veterans;
- ▶ the Montana Veterans' Affairs Division, which coordinates claims for federal benefits; and
- ▶ the federal Veterans' Administration Services, which operates a regional center at Fort Harrison and is in the process of restructuring services in Montana to provide more local access to care and medication.

Speakers on behalf of Montana's homeless veteran population voiced concerns about the lack of outreach to homeless veterans living in camps in Montana's back country. Some speakers also offered support to efforts by the ad hoc Veterans' Resource Coalition (VRC) established by the Department of Military Affairs in an effort to respond to the Subcommittee's concerns about the need to improve communication and coordination among state agencies and homeless veterans. The Subcommittee continues to track the progress of VRC meetings and is expecting a written report with findings and recommendations to be presented to the Subcommittee at its August 4 meeting.

The Military and Veterans' Affairs Subcommittee is planning to visit the National Guard's Youth Challenge Program at Dillon and the Pre-Challenge program at Fort Harrison. However, no dates have yet been set for these visits.

For more information on SAIC activities, contact Sheri Heffelfinger at 444-3596 or visit the Committee's web site accessible through the state's home page at <http://mt.state.us>.

## CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES COMMITTEE

To Meet in May...The next scheduled meeting for the Children, Families, Health, and Human Services (CFHHS) Committee is May 12. Major agenda items will include a report from the DPHHS on its executive planning process, an update on FAIM II, and reports from the Montana Dental Access Coalition, the Governor's Council on Families, and the Subcommittee on the Tobacco Settlement.

Coalition to Meet in April...The Montana Dental Access Coalition will be meeting on April 7 to update members on progress to date and to further develop strategies to present to the CFHHS Committee on May 12. The meeting will be helped at DPHHS Auditorium, 111 N. Sanders, Helena from 10 a.m. to 4 p.m. For more information contact Susan Byorth Fox at (406) 444-3597 or Cheri Seed at

(406) 444-0276.

All Committee minutes, reports, and agendas and a link to Montana Dental Summit Information have been posted to the new interim committee website at: [http://leg.state.mt.us/interim\\_committees/](http://leg.state.mt.us/interim_committees/). Please visit the website and let us know what you think!

For more information or if you wish to be placed on the interested persons list, please contact Susan Byorth Fox by phone at (406) 444-3597, e-mail: [sfox@state.mt.us](mailto:sfox@state.mt.us), or mail to: Legislative Services Division, PO Box 201706, Helena MT 59620-1706.

## **DISTRICTING AND APPORTIONMENT COMMISSION**

To Meet This Summer...The Commission has not yet scheduled its next meeting which is expected to be in the summer. Redistricting software is being researched and selection is anticipated by summer. The next meeting will involve a work session for the Commission to select its criteria for redistricting.

For more information or if you wish to be placed on the interested persons list, please contact Susan Byorth Fox by phone at (406) 444-3597, by e-mail at [<sfox@state.mt.us>](mailto:<sfox@state.mt.us>), or by mail to Legislative Services Division, PO Box 201706, Helena MT 59620-1706.

## **EDUCATION AND LOCAL GOVERNMENT COMMITTEE**

May Meeting May Be Rescheduled...The Education and Local Government Committee is scheduled to meet in Helena at the Federal Building on May 11-12. However, due to Governor Racicot's announcement of a special session to be held in May, the Committee's meeting may be rescheduled.

For more information about the May meeting or about the Committee in general, please contact Connie Erickson at 444-3064 or by e-mail at [<cerickson@state.mt.us>](mailto:<cerickson@state.mt.us>). You can also visit the Committee's website at [http://leg.state.mt.us/Interim\\_Committees/EDUCATION/index.htm](http://leg.state.mt.us/Interim_Committees/EDUCATION/index.htm).

## COUNTDOWN TO CENSUS 2000: APRIL 1, 2000

Census Winding Down...Census day has come and gone but census enumerators will be following up on missing forms and completing census activities. The census data for the purposes of congressional reapportionment will be delivered to the President on December 31, 2000, and for the purposes of congressional and legislative redistricting on March 31, 2001. As of March 27, 2000, Montana's initial response rate is 48% for mail returns of census forms. If you want to keep updated, go to this URL: <http://rates.census.gov/cgi-bin/Intro>.

## THE BACK PAGE

### AGE, TENURE, AND HUMAN RESOURCE PLANNING IN MONTANA STATE GOVERNMENT

By Dave Bohyer, Research Director

Legislative Services Division  
and

Jon Moe, Fiscal Specialist  
Legislative Fiscal Division

#### INTRODUCTION

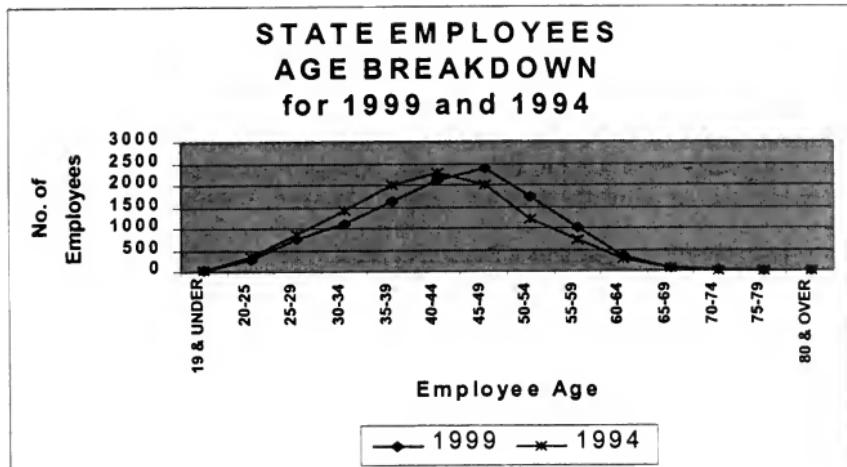
The changing demographics and general "greying of America" is recognized nationally and is beginning to be felt here in the Treasure State. The Great Falls Tribune has had recent articles about the impacts of recent and pending retirements of teachers and administrators within the Great Falls public school system. The Billings Gazette has had virtually parallel articles about Billings public school retirements. The March 2000 issue of Governing magazine contains an article titled "The Employee Exodus" wherein it states:

... potential retirements among a significant number of top staff [in San Diego County, CA,] have inspired the county to survey its "bench strength" to see who might be available to fill those [current and soon-to-be vacant] positions.

In an era when the public sector has been adding employees and competition for workers is at the tightest it's been in recent history, it all adds up to a looming manpower crisis in state and local government.... (Governing, March 2000, p. 36.)

#### MONTANA STATE GOVERNMENT

Somewhat closer to home, John McEwen, Administrator of the State Personnel Division, has said that the issues of the aging of the State's public sector workforce and retirements on the horizon have been gaining attention within Montana over the past several months and will likely gain more attention as the picture becomes clearer. A quick review of employee data indicates that between 15% and 20% of the state government workforce has 20 years or more of state service. Among the higher-level classified positions within state government, the ratio is even higher, and among those employees categorized as "career executives" -- the deputy directors, some division administrators, and the chiefs of some of the state's largest bureaus -- tenure in excess of 20 years is nearly universal.



SOURCE: State Personnel Division - Employee Profile

From the age perspective, in 1999, 27.7 percent of state employees were age 50 or over. In 1994, the same age group was 20.1 percent of the state workforce. This much talked about aging of the population, and in this case the state workforce, is demonstrated by the above chart. In the five year period from 1994 to 1999, there a significant increase in the number of employees over age 45 and a decrease in the number of employees under 45.

## THE IMPLICATIONS

There are a variety of associated fiscal and policy issues that fall within three categories: cost, loss of experience, and the ability to hire replacements for those who leave state service.

Cost - With an increased number of persons retiring, there is a potential for significant expenditures for pay outs for accrued annual leave and sick leave. Annual leave is paid at full value and sick leave is paid at 25 percent of full value. Generally, when retirements with pay outs occur, the costs are absorbed by the agency through vacancy savings or through other savings, within the limitations placed on expenditures by the Legislature. The impact of pay outs will be dependent upon when, not if, these employees leave state service. The impact would not be as great if the pay outs are evenly spread out over the years. However, if a large number of retirements occur in any given year, requests for additional funding might be expected. Cost, however, may be the least of the concerns implied by the aging and longer-tenured workforce.

Loss of Experience - The argument (if not fact) that term limits affecting elected officials will result in a loss of institutional memory applies just the same to the retirement of long time state employees. Employees with 20 or more years of experience in programs and state government will have accumulated a tremendous amount of knowledge, skills, and abilities that are recognized as a huge asset to the State of Montana. Whenever a larger than normal number of such employees leave state service, there will be, collectively, a large drain of program knowledge and management or administrative savvy that goes with the retiring individuals.

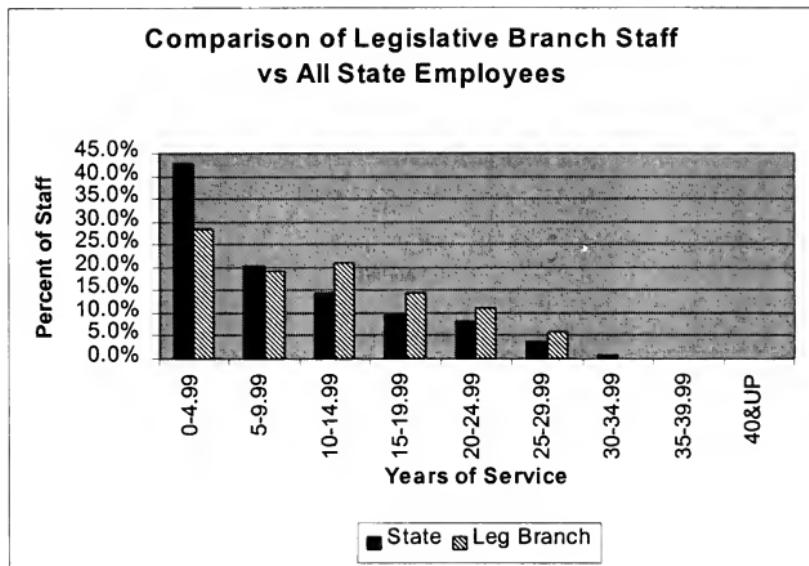
Ability to Hire Replacements - Replacing retiring veteran staffers may be the most difficult issue, even though it is really the only one for which there is potential to do something proactively. Workforce planning will be of upmost importance in anticipating accelerated retirements. This issue includes the training of existing staff to take over vacated roles or finding qualified external applicants. In either case, state agencies will be competing with the private sector for qualified applicants, because the private sector will be experiencing the same drain on senior staff. Complicating matters further is the fact that the economy is in a period of expansion resulting in private sector companies adding workers. Even the luminary Alan Greenspan consistently warns of potential effects of a tight labor market, a situation that cannot be ignored, even in Montana.

## THE LEGISLATIVE BRANCH SPECIFICALLY

In the Legislature's own back yard, House and Senate longevity -- and the soon-to-be lack of it -- is strikingly evident. At the end of current legislative terms, within the Senate, 60% of the 50 current senators will have 8 years or more of service -- the threshold at which term limits kicks in. In the House of Representatives, the ratio falls to 35% who will have 8 years or more of service. (Although the cause of many (pending) retirements within the House and Senate is the factor of term limits, the effect of the limits is very difficult for term-limited legislators to avoid.) To illustrate the fiscal implications of only legislator "retirements" the Legislature has anticipated these retirements by appropriating, in the 1999 "feed bill", \$407,365 for the purpose of retirement contributions for members reaching term limits in the fiscal 2000-01 biennium. And that addresses only the fiscal impact, not the implicit loss of institutional memory, experience, savvy, and the like.

Among Montana's legislative employees, the story is much the same as it is throughout state government. Approximately 20% of permanent Legislative Branch staff have 20 years or more of state service. Among the highest level managers within the Legislative Branch, only 3 of 13 have fewer than 20 years, and only 1 has less than 15 years. Moreover, eight Legislative Branch staffers have more than 25 years. If all of the legislative staffers with 20 years or more of state service retired today, the payout would be approximately \$350,000. Fortunately, only a

couple of these staff have announced an intent to retire within this calendar year.



SOURCE: State Personnel Division - Employee Profile

## WHAT NOW?

The data described in this article briefly summarize the issues, but what can be done to mitigate the impacts? According to John McEwen of the State Personnel Division, some agencies are performing human resource planning in anticipation of the pending retirements. Some are very cognizant of the fact that existing staff, with less service time, need to be given the opportunity to learn the ropes and to be able to transition into the leadership roles. Others are expressing the budgetary concern of pending pay outs that are due individuals leaving state service. Planning is the key, and developing strategies to address the various issues is critical for every agency. All agencies are being encouraged to do the necessary planning in order to come to grips with the potential if not likely magnitude of this issue.



## INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED,  
ALL MEETINGS ARE HELD IN HELENA.

### APRIL

April 12, Eminent Domain Subcommittee

April 12, Debt Service Subcommittee, Federal Building, Room 487, 1:30 p.m.

April 13-14, Revenue and Taxation Committee, Federal Building, Room B7

April 13, Law, Justice, and Indian Affairs Committee, Browning

April 14, Law, Justice, and Indian Affairs Committee, Shelby, Crossroads Correctional Center, Inmate Visitation Room

April 14, MEPA Subcommittee, Department of Environmental Quality, 1520 E. Sixth Avenue, Director's Conference Room

April 19-20, Business, Labor, and Agriculture Committee, Federal Building

April 20, Transition Advisory Committee, MSU-Billings, Student Union Building, Russell Room, 9 a.m.

April 28, Public Information Subcommittee, MSU-Bozeman

April 28, Workers' Compensation Subcommittee, Federal Building, Room B7

### MAY

May 5, Environmental Quality Council

May 10-11, Mental Health Managed Care Subcommittee, Federal Building, Room B7, 9 a.m. (meeting may be rescheduled around the special legislative session)

May 11, Postsecondary Education Policy and Budget Subcommittee, Federal Building, Room 487, 9 a.m. (meeting may be rescheduled around the special legislative session)

May 11, Local Government Subcommittee, Federal Building (may be rescheduled around the special legislative session)

May 12, Education and Local Government Committee, Federal Building, Room B7 (meeting may be rescheduled around the special legislative session)

May 12, Children, Families, Health, and Human Services Committee

May 18-19, State Administration, Public Employee Retirement Systems, and Veterans' Affairs Committee (meeting may be rescheduled due to the special legislative session)

## JUNE

June 7, Information Technology Management Study Subcommittee, Federal Building (or 1st floor Capitol Building, if renovation is complete)

June 8, Subcommittee on Statutory Appropriations and Dedicated Revenue, Federal Building, Room 487 (or 1st floor Capitol Building, if renovation is complete)

June 8-9, Legislative Finance Committee, Federal Building, Room B7 (or 1st floor Capitol Building, if renovation is complete), 1 p.m. (June 8), 8 a.m. (June 9)

June 9, Legislative Council

June 22-23, Education and Local Government Committee



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